

DISCUSSION RESPONSE

## A Response to “A Financial Crisis or Something More?”

XIMENA SOLEY — 22 June, 2016



In a post of 13 June to this [blog](#), the authors addressed the [financial crisis](#) of the Inter-American Commission on Human Rights, characterized it as a result of state dissatisfaction, and portrayed it as an opportunity to reimagine the role of member states and the organs of the Inter-American Human Rights System (the Commission and the Court). I agree with the authors that the financial crisis goes beyond the issue of money and is rather a reflection of the stance that member states have towards the regional human rights protection system but I strongly disagree with their appraisal of the reasons for the crisis and do not consider it an opportunity for positive change. It is rather an ominous threat.

Let's get the facts straight. The shortfall in the budget that generated this crisis is the reduction of donations from European states and not a sudden loss of trust by OAS member states. In short, states have not pulled funding from the Commission. Rather, since the inception of this organ, member states have kept it (and later the Court) on a short financial leash. The Commission's budget is meager in size (8,5 million USD yearly, or less than a penny per inhabitant of the Americas), and only 46% is made up of regular state contributions. The remaining 56% is made up of special contributions or donations – some of them made by member states, others by third countries or even organizations. In financial terms, the commitment to the Inter-American System has always been precarious – which does not speak too highly of the democratic and liberal quality of its member states.

The authors then make a link between the current crisis and the 2011-2013 “strengthening process” and suggest that it is a sign that the outcome of this two-year reflection process, in which states were the main protagonists, was somehow inadequate to appease states and motivate them to dig deeper into their pockets. The relation these two situations bear to each other is tenuous. First, the few member states that have come forward with donations have not made them conditional on further reforms. Second, the political climate this time around is quite different. Then, we had frontal confrontation with the system, today, a “silent checkmate”. In 2011-2013, hemispheric relations were in flux and the strengthening process was part of a broader strategy to drastically reduce the role of the United States in the Americas. Crippling the OAS – and the Commission – was instrumental to these aims.

The existence of the OAS was called into question and new parallel institutions excluding the US were created (CELAC, ALBA, UNASUR), partly in order to render it superfluous. Evo Morales opened the General Assembly Session of 2012 in Cochabamba by stating that the OAS had two options: “dying as a servant of the empire or reviving to serve all of the nations of the Americas”. The Ecuadorean Foreign Minister called for OAS functions to be absorbed by CELAC and for a human rights mechanism to be created under UNASUR.

The position of the regional hegemon in the Commission and the Inter-American system was an important component of the “strengthening process”. Hugo Chávez disparaged the Commission by calling it “a mafia infiltrated by the US Department of State” that “serves the interests of hegemonic US policy in the region”. Part of Venezuela’s reasons for denouncing the American Convention and withdrawing from the Inter-American Court were the unequal human rights obligations of the states in the region.

Such stakes are largely absent in the current financial crisis.

### **Tinkering, yes. Reimagining, no!**

The authors highlighted the advances that the region has made regarding democracy and human rights as powerful reasons to rethink the practices and arrangements that were borne out of dictatorships and transitions. This is a valid proposition and endeavor but I disagree with the terms on which such reflections are premised. The authors talk generally of situations where national contexts were not sufficiently taken into account or state participation was limited. Such situations are evidently worthy of analysis. I agree that the Inter-American legal framework can be tinkered with in order to give expression to the principle of

democracy. However, the formulation of far-reaching proposals should keep in mind what the overwhelming majority of the Commission's operations look like, the general context in which it operates and the function that a human rights protection mechanism is supposed to play. Deficiencies should not be glossed over but they should be placed in their proper context.

Although the state of democracy and human rights in the region is probably better than it has ever been it still has not become an entrenched fact of political life. Conceptions of democracy are relatively strong regarding accession to power (electoral democracy) but still quite weak regarding the manner in which power should be wielded. More specifically, power continues to be concentrated in the Executive and the system of checks and balances is essentially unbalanced. In short, generous human rights catalogues coexist with power arrangements that are not conducive to their realization and the horrific human rights record of many countries in the region attest to these shortcomings.

Responsible discussion on the future of the Inter-American System, should keep in mind that its organs have been instrumental in "securing the promises of national constitutions". When domestic mechanisms fail, as they inevitably will sometimes, it is of the utmost importance to have a strong regional human rights mechanism that controls the exercise of state power and that recognizes the vulnerability of the individual vis à vis Leviathan. A far-reaching call to reimagine Inter-American System's role and that of states in it must be aware that it threatens to destroy hard-earned institutional arrangements that have proven

instrumental in guaranteeing human rights and stabilizing democratic governance in the region.

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#### 1 Comment



**ARTURO VILLAGRÁN AND FABIA VEÇOSO**

27 June, 2016 at 06:50 (Edit) — Reply

Dear Ximena,

It was great to read your reaction to our “A Financial Crisis or something more” post. We strongly believe that comprehensive debates are needed to cope with the current challenges experienced by the Inter-American Commission. It is essential to talk about this crisis, exchanging ideas and perspectives on the future of the human rights regime in our region. More importantly, we too want to see the Inter-American System fully operational, and this was the main motto for our contribution. We would like to briefly comment on three issues mentioned in your response.

First, the argument on the reduction of European donations as the main reason for the current financial crisis. This feature adds even more evidence to our argument on the tension between member states and the Inter-American System, shedding light on the dramatic conditions related to the lack of material support by member states. However, it is to be also noted that certain members, such as Chile, have actually decreased their financial support over the years. This was one of the main reasons of the latest IACHR period of sessions to be held there, insofar to make them reconsider their posture. As we have argued, this is a structural problem that demands deep engagement to ensure the system’s very existence.

As to your view on the tenuous relation between the current crisis and the 2011-2013 “strengthening process”, we acknowledge that there are other important regional fluxes to consider when rethinking the Inter-American System. Depicting the strengthening process as something strictly related to reducing the position of the United States in the Americas, and the instrumental role of the Inter-American Commission in this context, seems to us to be a framework that prevents further reflexive discussion on the survival of the Inter-American System. This does not mean that we are simply disregarding the contextual dimension you added to the debate, rather that

this analysis is not a productive means to cope with the current crisis. Moreover, as the “Process of Reflection on the Workings of the IACHR with a view to Strengthening the IAHRs” reflects, the 2011-2012 debates did not encompass a strong tension between the US and other American states. It is also to be noted that we need to consider more carefully the position of other states, such as those in the Central-American region, and Mexico, Peru, Colombia and Chile, who were not part of this “imperial” discussion and, genuinely, took the opportunity to participate actively in the reform process.

Finally, tinkering did not work!

We can concur that the current crisis denotes a deeper issue within the system. Nevertheless, the reform process was an experiment on tinkering, which ultimately failed to secure financial support and strengthen the Inter-American System. Therefore, for this, not only we need to focus on the role of the IACHR, but also we need to be responsible and take into account the bigger picture! For that, we need to study the IACHR within a larger deeply historical-problematic context of the region.

In this sense, yes, certainly, the IACHR has proven to be a guarantee for exposing democratic shortages in the region. However, to depict it as an organ which has delivered the “securing of promises of national constitutions” is, by far, an overstatement. For this, we need to see other new successful experiments, such as the CICIG and the MACCIH in Central-America, which have aided democratic reform and consolidation.

We thank again for you rich arguments and discussion, and hope to continue with this debate, hopefully with aim to involve new ideas and postures.

Arturo and Fabia

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